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FREQUENTLY ASKED QUESTIONS

1. What is the Voluntary Cleanup and Property Redevelopment Program?

The Voluntary Cleanup and Property Redevelopment Program (VCPRP) is a state program established by legislation, passed by the Kansas Legislature and signed by the Governor in 1997. Under the VCPRP, property with environmental contamination that does not pose an immediate or significant threat to human health and the environment may be investigated, cleaned up (if necessary), and returned to productive use. Procedures are greatly simplified and cleanup expedited when compared to federal and state enforcement cleanup programs. A No Further Action determination may be issued to the voluntary party once a property has been properly addressed to limit future environmental liabilities.

2. Who can participate in the Kansas VCPRP?

Just about any person or entity that can adequately demonstrate access to, or control of, a property may propose specific Kansas properties with known or suspected environmental contamination for participation in the VCPRP. This includes previous, current, or prospective property owners; a person who previously, currently, or prospectively operates a facility located at a property; persons who directly or indirectly arranged for the disposal of contaminants at the property; persons who legally control the property; or local governments who acquire title to the property involuntarily through bankruptcy, tax delinquency, abandonment or other circumstances.

3. Why should I consider participating in the VCPRP to evaluate/address environmental contamination at my property?

Known or suspected environmental contamination may render property unproductive, the sale of the property impossible, or financing of activities on the property problematic until the contamination is evaluated and addressed. Current federal and state cleanup programs generally address only properties with significant contamination levels or those that pose an immediate threat to human health or the environment. A much larger number of properties with minor contamination will probably never be evaluated or addressed under federal programs. The VCPRP program provides a relatively streamlined and unambiguous mechanism to return property with contamination to productive use.

4. What types of properties are eligible to participate in the VCPRP?

Any Kansas property containing an actual, threatened or suspected release of environmental contamination, including those properties where the source of the contamination is at an adjacent property, may be eligible to participate in the VCPRP, except: 1) properties listed or proposed for listing on the National Priorities List (NPL) under the Comprehensive



Environmental Response, Compensation and Liability Act (CERCLA i.e. Superfund); 2) properties subject to enforcement actions pursuant to city, county, state or federal environmental laws, orders, or agreements; 3) those properties with a facility which has or should have a permit with a corrective action component pursuant to the Resource Conservation and Recovery Act (RCRA); 4) properties with contamination from releases associated with oil and gas production activities and the releases are specifically regulated by the Kansas Corporation Commission (KCC); 5) properties where the environmental contamination represents an immediate threat to human health or the environment; and, 6) properties that KDHE believes may pose a substantial threat to public or private drinking water wells. Portions of larger properties where other portions have been proposed for NPL listing, are under environmental regulation, are subject to RCRA corrective action or are regulated by KCC may also be eligible.

5. I am contemplating the sale of property. Can I provide a buyer and their lending institution an evaluation of existing environmental conditions at my property through participation in the VCPRP?

Generally, you may be required to conduct a Phase I environmental assessment and, if necessary, a Phase II environmental investigation prior to a sale or refinancing of any industrial or commercial property. If you know or suspect that the property has environmental contamination, you may enter it into the VCPRP to address the contamination and provide the documents generated to your prospective buyer and their financial institution. Unlike Phase I and Phase II environmental investigations, the investigations carried out under the VCPRP will result in an official determination as to whether cleanup will be required and, if so, what will need to be done to receive an official No Further Action determination. Therefore, the seller, prospective buyers, and their lenders will know what will be required to mitigate environmental liabilities at a property which should expedite the transaction of the property.

6. How much time will be involved in the VCPRP process from submitting an application until KDHE issues a No Further Action determination letter?

For properties where the source of the environmental contamination is from adjacent property and that contamination is being addressed under KDHE programs, resolution would likely be within 90 days. For properties where a Voluntary Cleanup Investigation (VCI) is required, several months may be needed depending on size and complexity. For properties where voluntary cleanups are necessary, the time frame will vary considerably depending on complexity, the preferred method of cleanup, and other factors. For example, a property with soil contamination only that can be cleaned up through excavation and disposal can be processed to the No Further Action much faster than a property with ground water contamination that requires cleanup and/or monitoring over time.



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- 7. Property that I own has been contaminated by a source located on another property. Can I get a No Further Action determination letter from KDHE?**

Yes, provided the contamination is being addressed through KDHE or EPA programs and your property is not also a source for contamination.

- 8. I have already conducted a soil and/or ground water investigation at my property without KDHE's oversight. Must I re-investigate my property following acceptance into the VCPRP?**

Prior environmental investigations of a property by a qualified environmental professional should not have to be repeated; however, KDHE may request some limited verification sampling to validate the prior investigation data before accepting it. Noting that investigations vary in scope, a prior investigation may not be adequately complete and some additional investigation may be necessary to meet the needs of the VCPRP.

- 9. What obligations does the Voluntary Agreement establish for the voluntary party and KDHE?**

KDHE and the voluntary party agree to cooperate to investigate and (if necessary) clean up the environmental contamination at a property. The voluntary party agrees to pay for the investigation, cleanup, and KDHE oversight. KDHE will not take any other environmental regulatory action with regards to the contamination in question at the property and, once a voluntary cleanup has been accomplished, KDHE may issue a No Further Action determination, if appropriate.

- 10. How is the subject property identified in the VCPRP process? Can the subject property consist of only a portion of a larger property?**

Property must be identified by legal description and a survey map prepared by a Kansas-licensed surveyor. A legal survey map does not necessarily have to be prepared at the time of application but will be required immediately prior to receiving an NFA; KDHE has developed a policy that provides various options to satisfy the legal survey map requirement. Portions of a larger property may be considered provided they otherwise meet eligibility requirements.

- 11. Will cleanup standards be based on specific predetermined cleanup goals or may risk-based corrective actions be taken?**

Where cleanup is required, cleanup goals may be based on specific predetermined risk-based cleanup standards established by KDHE and published in the current edition of the Risk-Based Standards for Kansas, RSK Manual, or site-specific risk analysis performed in accordance with KDHE guidance may be used to establish corrective action goals. KDHE will approve final cleanup requirements for the property.



12. If I sign a Voluntary Agreement for my property, may I later leave the program?

Yes. Voluntary parties may leave the VCPRP at any time following notice to KDHE provided they pay all KDHE oversight costs due and the property presents no greater threat to human health or the environment than when the agreement was signed. If the voluntary party terminates the agreement, KDHE may then choose to address the contamination through another program.

13. Will I be admitting liability for environmental contamination if I apply to the VCPRP?

No. The Voluntary Agreement specifically states that the voluntary party admits no liability for contamination that may be at the property; rather, they agree to cooperate with KDHE to investigate and clean up (if necessary) the contamination so that the subject property may be returned to productive use or sold.

14. Can KDHE unilaterally terminate the Voluntary Agreement?

KDHE may terminate a Voluntary Agreement following appropriate notice if the voluntary party fails to comply with the agreement, fails to pay required oversight costs, or if the contamination is discovered upon investigation to be a significant or immediate threat to human health or the environment.

15. I am the owner of a contaminated property that I would like to redevelop, but I have no money. Will KDHE provide funds to clean up my property?

No. The VCPRP does not provide funding to investigate or cleanup contaminated property. The program is funded through fees from voluntary parties that pay all KDHE oversight costs. However, other programs exist that may be able to assist with funding for redevelopment. For example, there may be some reimbursement potential for work conducted under the VCPRP on certain agricultural-related properties through the Kansas Agricultural Remediation Board (KARB). See Question No. 18 for details.

16. My property was contaminated by the lessee. If my property is cleaned up under the VCPRP, will I be protected if the lessee releases (or if I release) more contamination?

No. Completing a Voluntary Cleanup and receiving a No Further Action determination from KDHE only applies to the contamination addressed through the VCPRP and the final decision to issue the No Further Action determination is based on data available at that time. Releases and resulting contamination at a property occurring after the No Further Action determination is issued are not included and will be handled as a separate issue. Reapplication to the VCPRP may be necessary for releases occurring subsequent to an NFA.



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- 17. Can KDHE or the U.S. Environmental Protection Agency (EPA) require further environmental action at my property once I receive a No Further Action determination?**

Not for the contamination or conditions covered by the No Further Action determination. If environmental conditions at the property change or if new contamination not covered by the No Further Action is discovered at a property, further actions may be necessary to address the contamination. The EPA and KDHE have entered into a Memorandum of Agreement (MOA) whereby the EPA has agreed to honor the environmental determinations made by KDHE under the VCPRP and certain other KDHE environmental programs.

- 18. What is the Kansas Agricultural Remediation Board (KARB)?**

The Kansas Agricultural Remediation Board (KARB) was created by the Kansas Agricultural Remediation Act, passed by the Kansas Legislature in 2000. This act created the Kansas agricultural remediation program for reimbursing eligible parties for investigation and remediation costs incurred under KDHE programs, such as the VCPRP, after July 1, 1997. The remediation fund was created by assessing an annual fee on pesticide products, pesticide dealers, grain storage, fertilizer products and custom blenders. The fund is managed by a seven-member board appointed by the governor.

If your agricultural related business is addressing contamination under a KDHE remedial program such as the VCPRP, you should contact the KARB directly to obtain the latest information on your possible eligibility for reimbursement and the application process. Their address is: KARB, 816 SW Tyler, Topeka, Kansas 66612. Their phone is (785) 440-0356 and FAX is (785) 234-2930. KARB also has a web page address at: www.karb.org. Remember that eligible costs incurred after September 1, 2001, must be submitted to KARB for reimbursement within 2 years.

- 19. May I include contamination from underground storage tanks in my VCPRP activities?**

KDHE recommends that all contamination from underground storage tanks eligible for activities under the Kansas Petroleum Storage Tank Release Trust Fund be addressed under that program. If for some reason you do wish to include contamination from underground storage tanks as part of the VCPRP, it is an option.

- 20. I am applying to the VCPRP to address possible environmental contamination at my property. I would like to expedite activities at my property and work closely with KDHE throughout the process. Would an early meeting with KDHE to discuss the VCPRP process be a wise move on my part?**

Yes, definitely! Shortly after the Voluntary Agreement you sign is executed (signed) by the Secretary of KDHE, you will receive a copy of the executed agreement along with a letter that assigns a KDHE Project Manager. Immediately call that Project Manager and arrange for a



meeting. If you already have a consultant, bring them along. Otherwise, you may wish to discuss the selection of a qualified environmental consultant with your KDHE Project Manager. Contact your KDHE Project Manager early and often to expedite the VCPRP process.

21. Will KDHE help me select a qualified environmental professional?

KDHE obviously cannot recommend one consultant over another. KDHE will provide, upon your request, a list of environmental professionals who have worked for clients under various KDHE programs. Refer to Section 11 of the VCPRP Manual on choosing a consultant and make your selection carefully based on the previous work record of the consultant in dealing with the specific environmental conditions at your property. The work of the KDHE Project Managers is to provide official oversight of the environmental activities at the property to the end that KDHE will be able to issue a final No Further Action determination. The KDHE Project Managers cannot perform the services provided by consultants.

While specific requirements for state licensing of environmental professionals are not contained in the Voluntary Cleanup and Property Redevelopment Act nor in KDHE regulations adopted to implement the Act, Kansas law does require that anyone offering services to the public as an environmental or geotechnical geologist (not oil field related) or engineer in Kansas be appropriately licensed by the Kansas Board of Technical Professions.

22. My property is in a small town that obtains its drinking water supply from the shallow aquifer. Will I be eligible for the VCPRP?

Bureau of Environmental Remediation Policy #BER-RS-VCP-002 specifies that at the time of application, if it is known that contamination from your property is impacting or threatening to impact active public or private drinking water wells, the property is not eligible for the VCPRP but must be addressed under the State Cooperative Program. However, if prior to application a voluntary party or other entity has connected the impacted or threatened users to a permanent drinking water supply or the impacted or threatened wells are deemed inactive, the property may be eligible for the VCPRP.

23. My company has 10 properties where our crude petroleum gathering pipe lines have leaked crude to the environment. We would like to resolve environmental issues at all of these properties through the VCPRP, but the initial deposits for the properties would represent a large cash outlay for our small company. Can you help us?

Yes. Bureau of Environmental Remediation policy #BER-RS-VCP-001 states that four or more similar eligible properties located in the same general area of the state may be entered into the VCPRP simultaneously. The initial deposit may be established as \$1,000.00 per property. The initial deposit will remain in your account as a cash balance provided you agree to pay



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KDHE oversight costs that will be tracked and billed quarterly for each individual property. The initial deposit may be refundable upon receiving a No Further Action determination for each of the properties entered together as a group. Contact the VCPRP Coordinator at (785) 296-1665 to discuss the possibility of applications for multiple properties.

24. What is an Environmental Use Control (EUC), how do EUCs differ from institutional controls, and how can it be used within the VCPRP?

Institutional controls have been used as part of cleanup strategies in the environmental universe for many years and typically involve restrictions on uses of a property, prohibitions on installing drinking water wells, engineered structures such as caps over contamination left in place, and other similar mechanisms employed to prevent unacceptable exposures to contamination at a property. These restrictions were typically implemented through filing deed restrictions or restrictive covenants on the title or deed for the property. Kansas Administrative Regulation, K.A.R. 28-71-11(g) describes the use of institutional controls as part of cleanup alternatives acceptable for the VCPRP. Effective July 1, 2003, new legislation was enacted establishing KDHE's authority to establish an Environmental Use Control (EUC) Program. EUCs are essentially the same as institutional controls in terms of restrictions on property use or maintenance of protective structures and are implemented similarly by filing an EUC Agreement containing the site-specific restrictions or controls on the title of a property. The EUC Agreement is a written agreement between a voluntary party and KDHE. The EUC Program involves a fee paid to KDHE to provide continued inspection, monitoring, and tracking of EUCs implemented in Kansas. EUCs can be used as part of cleanup alternatives in place of institutional controls as discussed in the mentioned regulation. Prior to enactment of the EUC law, there was no guarantee that institutional controls placed on a property would remain in perpetuity and survive ownership changes. EUCs provide assurance that controls placed on a property in perpetuity are tracked, inspected, and verified to remain in effect even if the property ownership changes. The EUC law also provides enforcement authority should an EUC Agreement be violated which will aid in protection of public health and the environment.